



Locked Up Alone

Detention Conditions and Mental Health at Guantanamo

Copyright © 2008 Human Rights Watch
All rights reserved.
Printed in the United States of America
ISBN: 1-56432-340-4
Cover design by Rafael Jimenez

Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: +1 212 290 4700, Fax: +1 212 736 1300
hrwnyc@hrw.org

Poststraße 4-5
10178 Berlin, Germany
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629
berlin@hrw.org

Avenue des Gaulois, 7
1040 Brussels, Belgium
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471
hrwbe@hrw.org

64-66 Rue de Lausanne
1202 Geneva, Switzerland
Tel: +41 22 738 0481, Fax: +41 22 738 1791
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor
London N1 9HF, UK
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800
hrwuk@hrw.org

27 Rue de Lisbonne
75008 Paris, France
Tel: +33 (1) 43 59 55 35, Fax: +33 (1) 43 59 55 22
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009 USA
Tel: +1 202 612 4321, Fax: +1 202 612 4333
hrwdc@hrw.org

Web Site Address: <http://www.hrw.org>

Locked Up Alone

Detention Conditions and Mental Health at Guantanamo

I. Summary.....	1
II. The Range of Prison Facilities at Guantanamo.....	7
Camp 3.....	8
Camp 5.....	9
Camp 6.....	11
Camp 7.....	13
III. Supermax Prisons and the Psychological Effects of Isolation	20
IV. Cases	24
Walid.....	24
The Group of Uighurs.....	25
Abdulli Feghoul	29
Saber Lahmar	29
Oybek Jamoldinivich Jabbarov	31
Ahmed Belbacha	33
Mohammad El Gharani	34
Ayman Al Shurafa	35
B	36
Mohammed Jawad.....	37
Salim Hamdan.....	39
V. International Standards.....	41
VI. Recommendations.....	44
Acknowledgments.....	46
Appendix: Email from Attorneys for Saber Lahmar to Department of Justice Officials.....	47

I. Summary

[I]n 2004 and 2005 we were told that we were innocent, however, we are being incarcerated in jail for the past 6 years until present. We fail to know why we are still in jail here.... Being away from family, away from our homeland, and also away from the outside world and losing any contact with anyone, also being forbidden from the natural sunlight, natural air, being surrounded with a metal box all around is not suitable for a human being.

—Excerpted from a December 12, 2007 letter by Abdulghappar Turkistani, a young Uighur man.

Wake at 4:30 or 5:00. Pray. Go back to sleep. Walk in circles—north, south, east, west—around his 6-by-12 foot cell for an hour. Go back to sleep for another two or more hours. Wake up and read the Koran or look at a magazine (written in a language that he does not understand). Pray. Walk in circles once more. Eat lunch. Pray. Walk in circles. Pray. Walk in circles or look at a magazine (again, in a foreign language). Go back to sleep at 10:00 p.m.

The next day is the same except that the detainee may leave his cell for two hours of recreation in a slightly larger pen or for a shower.

—Detainee Huzaifa Parhat's description of his daily routine, as summarized by his lawyer; Parhat reportedly was deemed eligible for release more than four years ago.

Approximately 270 prisoners remain at Guantanamo, most of whom have been in US custody for more than six years without ever being charged with a crime. Some 185 of them—including many of the several dozen individuals already cleared for release or transfer—are now being housed in prison facilities akin to and in some respects more restrictive than many “supermax” prisons in the United States.

Such detainees at Guantanamo spend 22 hours a day alone in small cells with little or no natural light or fresh air. They are allowed out only two hours a day (often at night) to exercise in small outdoor pens. Except for the occasional visit by an attorney or a representative of the International Committee of the Red Cross (ICRC),

they have little human interaction with anyone other than interrogators and prison staff. For many detainees, isolated confinement is not a time-limited punishment for a disciplinary infraction, but something they have faced day in, day out, for months and years.

None of the prisoners currently held at Guantanamo has ever been allowed a visit from a family member, and most of them have never been allowed even to make a single phone call home during the six-plus years they have been detained. Detainees receive virtually no educational or rehabilitative programming to help them pass the time.

The US government is quick to say that most prisoners at Guantanamo are not technically in solitary confinement because they can yell at each other through the gaps underneath their cell doors; they can talk to one another during recreation time; and they are allowed periodic ICRC and lawyer visits. The reality, nonetheless, is that these men live in extreme social isolation, cut off from family and friends, and even, to a large extent, from each other. They spend most of their days alone in totally enclosed cells, with no educational and vocational outlets, and little more than the Koran and a single book to occupy their minds—something that is of little use to those that are illiterate. As is to be expected, the conditions at Guantanamo have reportedly caused the mental health of many prisoners to deteriorate, as a number of the cases in this report suggest.

As officials at Guantanamo point out, some detainees pose significant security risks, and detainee management is easier when detainees are locked in their cells 22-plus hours a day. But such extreme and prolonged isolation violates international legal obligations, and can aggravate desperate behavior, potentially creating worse security problems over time. Should detainee mental health problems mount, as the limited available evidence suggests is already happening, the practice will also complicate ongoing efforts to resettle or repatriate many of these men.

Human Rights Watch continues to press for Guantanamo's closure, urging the United States to prosecute detainees implicated in crimes in US federal court or under the courts-martial system, and to repatriate or resettle the others. Nonetheless, the

reality is that 270 detainees continue to be held in Guantanamo, some of whom will likely be held there for the near future.

This report provides a physical description of the numbered “camps” in which Guantanamo detainees are being held, documents the inhumane conditions that prevail in many of the camps, and describes what appear to be increasingly frequent complaints of mental health deterioration voiced by detainees and their attorneys. The report is based on interviews with government officials and attorneys, and the cleared notes of meetings with detainees that attorneys were able to share with Human Rights Watch. (The Department of Defense does not allow any outsiders—including journalists and representatives of nongovernmental organizations, with the exception of the International Committee of the Red Cross, whose interviews are strictly confidential—to speak directly or by phone or email with any of the detainees still held at Guantanamo. In most cases, it has also prohibited attorneys from bringing in outside psychiatrists to evaluate the mental health of their clients, forcing attorneys to rely on “proxy” evaluations using a psychiatrist-developed and attorney-administered questionnaire. Given the lack of access, attorney reports of client conversations and proxy psychiatric exams provide the only available information about particular detainees’ experiences and states of mind.)

* * *

Among the roughly 185 individuals at Guantanamo currently housed in supermaximum-security conditions are the following:

- A young Palestinian who has reportedly grown increasingly lethargic, listless, distracted, and incoherent after being transferred to a high-security unit over a year ago. He continues to be housed in this unit, even after having been cleared to leave Guantanamo in February 2008.
- A group of ethnic Chinese Uighurs, all of whom have been cleared for release but cannot be sent back home to China due to credible fears that they will be tortured. In April 2008 the US government eased their restrictions slightly, moving them to their own wing of the maximum-security facility where they reportedly keep the meal slots open in their doors so they can talk without yelling, provided additional recreation hours, and allowed them to exercise in

groups of two; still, they spend the vast majority of the day locked in their windowless concrete cells.

- An Algerian who has been reportedly cleared to leave Guantanamo for over a year. He has told his lawyers, “It seems that I am buried in my grave.”
- A Bosnian-Algerian who has reportedly become psychotic during the more than two years that he has been held in virtually total isolation. He continues to be housed in one of the most-restrictive units at Guantanamo, totally cut off from all contact with other detainees.
- An Uzbek man confined to a wheelchair who cannot be returned to Uzbekistan because of credible fears that he will be tortured if returned, and whom the US is actively trying to resettle.
- A now-21-year-old Chadian who has been in Guantanamo since the age of 15, who has reportedly been subjected to racial harassment, and who has attempted to commit suicide at least seven times.
- A 33-year-old Palestinian cleared to leave Guantanamo over two years ago who suffers from a worsening skin disease and appears to be slipping further into a state of depression.
- A 23-year-old Afghan, Mohammad Jawad, who has been in Guantanamo since he was 17. Jawad is charged with attempted murder before the military commissions. His lawyers claim he is so mentally unstable that he cannot assist in his own defense.
- Salim Hamdan, a 37-year-old Yemeni, slated to be the first person tried before a military commission at Guantanamo, who has formally challenged the conditions of his confinement in military commission court filings. His lawyers state that he is so distraught over his living conditions that he often wants to discuss nothing else, and is no longer able to make competent decisions about his trial.

The US government insists that the harsh conditions that exist at Guantanamo are necessary and legitimate. US officials say that many of the detainees held there are sworn enemies of the United States. They note that some of the men have posed difficult and continuing management problems, engaging in misconduct that ranges

from throwing “cocktails” of urine and feces at guards, to attempting to stage riots. They point to a recent slew of head-butting incidents, in which detainees have allegedly injured guards.

Indeed, it was after a riot in May 2006—when detainees attacked guards with improvised weapons, including broken pieces of light bulbs—followed by three suicides the following month, that the military significantly increased security to prevent further disturbances. Detainees’ repeated hunger strikes and suicide attempts, which many outside observers perceive as cries for help, are seen by the military as challenges to its authority.

Still, while security concerns may explain some of the controls at Guantanamo, they do not justify Guantanamo’s unprecedented restrictions. As already noted, conditions in the high-security units at Guantanamo are in some ways more draconian than those of many “supermax” prisons in the United States, which hold the country’s most dangerous convicted criminals, including convicted terrorists. For example, prisoners at ADX-Florence, the country’s federal supermaximum-security prison, are allowed one to two phone calls per month to family members and friends, as well as monthly in-person visits. They also have televisions in their cells, which are used to broadcast educational and religious programming.

The military command at Guantanamo, Joint Task Force Guantanamo (JTF-GTMO), has acknowledged the need to give detainees subject to long-term detention additional stimuli and social opportunities. To its credit, approximately a year and a half ago, JTF-GTMO began allowing detainees to make phone calls home in the case of the death of a loved one; and in March the Department of Defense announced plans to allow detainees to make one phone call home a year. As of early June, some 40 detainees have been granted phone calls under this new program; and the military has set a goal of scheduling six calls a week, which will ultimately allow detainees to make two phone calls a year.

In addition, military officials at Guantanamo have told Human Rights Watch that they plan to make several other changes in the near future, including providing language classes for all detainees, expanding recreation areas, allowing more group recreation,

and permitting greater numbers of detainees to leave their cells and spend the day in areas where they can congregate jointly.

These reforms are needed. Detainees should—to the extent possible and consistent with safety concerns—be moved into communal living situations where they can interact with each other and participate in educational and group recreational opportunities. They should also be allowed to reconnect with the loved ones to whom they may ultimately return.

Continuing to house detainees in single-cell units 22 hours a day with virtually nothing to do all day long and no access to natural light or fresh air is not just cruel, it may be counterproductive. None of the detainees at Guantanamo has yet been convicted of a crime. Many will ultimately be released. It is unwise and short-sighted to warehouse them in conditions that may have a damaging psychological impact, and are very likely to breed hatred and resentment of the United States over the long term.

II. The Range of Prison Facilities at Guantanamo

Although the detainee population has declined significantly from its May 2003 peak of 680 detainees, 270 prisoners remain at Guantanamo, most of whom have been in US custody without charge for more than six years. Among those still held, there are some 70 people who have been cleared for release or transfer.¹

Guantanamo's 270 prisoners are held in several different prison units, and conditions vary significantly from one to the next.

At the outset, in early 2002, detainees arriving at Guantanamo were held in the open air, barbed-wire-enclosed Camp X-ray—a site that became the iconic image of Guantanamo. But Camp X-ray closed that April, and was replaced by a series of much less makeshift and generally more-restrictive prison facilities.

In February 2003 the military opened Camp 4 in an effort to ease restrictions and allow detainees who do not pose disciplinary problems to congregate more freely. Designed to resemble a prisoner-of-war lockup, Camp 4 includes 10-cot bunkhouses, communal showers and toilets, a soccer field, and a common outdoor area where detainees eat, pray, and play games together. Movies are regularly provided as entertainment; select news is posted on bulletin boards in common areas; and some detainees have reportedly been given the opportunity to attend Pashto, Arabic, and English classes.²

¹ Some are being protected from repatriation because of legitimate fears that they will be subject to torture or serious abuse upon return; while others are willing and eager to return home, but are waiting for the United States and their home country to work out repatriation arrangements. Walter Pincus, "With Other Nations Refusing Guantanamo Detainees' Return, 'We Are Stuck With Guantanamo,' Gates Says," *Washington Post*, May 26, 2008; William Glaberson, "Hurdles block move to release Guantanamo detainees," *International Herald Tribune*, August 9, 2007.

² JTF-GTMO reports that several previously illiterate detainees can now read. Human Rights Watch telephone interview with staff judge advocate for JTF-GTMO (name withheld), May 15, 2008. But the deputy director at the Canadian Department of Foreign Affairs, who in April visited Omar Khadr, the 21-year-old Canadian who is now being held at Camp 4, reported that the facility does not currently have any language teachers. Steven Edwards, "US guards call Khadr 'good kid': Report," *CanWest News Service*, June 2, 2008. A JTF-GTMO official denied the accuracy of this report, and stated that all language classes are supported by "real live teachers." Email communication from staff judge advocate for JTF-GTMO (name withheld), June 4, 2008.

Camp 4 has space for approximately 175 detainees, but was virtually emptied in May 2006 after a group of detainees reportedly attacked the guards with improvised weapons, including broken pieces of light bulbs, and caused significant damage to the facility.³ Three suicides followed a month later.⁴ Now some 50 detainees are housed there.⁵

Most detainees, however, are not provided anything close to the kinds of privileges afforded the detainees housed in Camp 4. The vast majority of detainees held in Guantanamo are housed in extremely restrictive and isolating conditions, in what are labeled Camps 3, 5, 6, and 7. In all, some 185 prisoners live in these four camps.

Camp 3

Opened in 2002, and temporarily closed in 2006, Camp 3 now reportedly serves as a punishment unit. Detainees are held in single cells that are 8 feet long, 6 feet 8 inches wide, and 8 feet tall. Cell walls are partially constructed of metal mesh material that lets in filtered light and air, with a steel roof. Each cell has its own flush-toilet and sink.

Detainees report that they spend at least 22 hours a day in their cell, that they are not housed adjacent to one another so cannot speak to each other. A giant “noise machine”—presumably a generator—reportedly runs all day long, making it impossible for them to communicate with each other even by yelling. Between that and the sound of soldiers walking by on metal planks, they say they can hear little else. Detainees are allowed a Koran in their cell but virtually nothing else. They are

³ No servicemen were reported injured in the riot, other than minor scrapes and bruises. Kathleen T. Rhem, “Skirmish With Guards, Two Suicide Attempts Test Guantanamo Procedures,” *American Forces Press Service*, May 19, 2006. See also Tim Golden, “The Battle for Guantanamo,” *New York Times Magazine*, September 17, 2006; Carol Rosenberg, “Reward for the Obedient: World Cup: Amid World Cup ‘football’ and legal wrangling, media coverage has resumed in the aftermath of last month’s suicides of detainees at the Guantanamo prison,” *Miami Herald*, July 5, 2006.

⁴ James Risen and Tim Golden, “3 Prisoners Commit Suicide at Guantánamo,” *New York Times*, June 11, 2006.

⁵ Human Rights Watch interview with Department of Defense official (name withheld), Washington, DC, May 14, 2008. For security reasons, the Department of Defense has declined to give Human Rights Watch an exact count of how many detainees are in each unit, but has instead provided approximations.

reportedly taken out alone for their recreation time so that their isolation from each other is complete.⁶

Approximately six detainees are believed to be held in Camp 3.⁷

Camp 5

Opened in May 2004 and modeled after a maximum-security prison design used in the United States, Camp 5 is a 100-bed high-security detention unit designed for those “deemed to be the highest threat to themselves, other detainees or guards.”⁸ Detainees generally spend 22 hours a day in 12-foot-long, 8-foot-wide, and 8-foot-tall concrete cells, furnished with a combination toilet-sink and a sleeping shelf, and with small opaque window slits. Meals are slid through slots in the cell doors and eaten alone.



Cell inside Camp 5. © 2006 Reuters

⁶ Human Rights Watch telephone interview with Zachary Katznelson, attorney for several Guantanamo detainees, including Shaker Amar, who is currently held in Camp 3, May 19, 2008; Human Rights Watch telephone interview with Stephen H. Oleskey, attorney for Saber Lahmar, who is currently held in Camp 3, May 19, 2008.

⁷ Ibid.

⁸ Joint Task Force Guantanamo, “Mission,” undated, <http://www.jtfgtmo.southcom.mil/mission.html> (accessed June 6, 2008).

Lights are kept on 24 hours a day, and detainees are constantly monitored by guards who peer in through the windows of the floor-length steel cell doors.⁹ Detainees are given eye masks so that they can sleep in spite of the lights.¹⁰



Recreation area, Camp 5. © 2006 Associated Press

Recreation—up to two hours a day—takes place either in individual 8-by-20-foot pens, or in 20-by-20-foot recreation areas that are sometimes used to hold two detainees at a time.¹¹ At least one detainee has told his lawyers that even in the larger pens they are forbidden from physically interacting with each other.¹²

Detainees in Camp 5 also report that they are often only offered recreation opportunities at night.¹³ A JTF-GTMO official told Human Rights Watch that there is

⁹ Carol Williams, “Dispatch from Guantánamo Bay, Cuba; A day in a detainee’s life; Predictability, covert communication and isolation are hallmarks,” *Los Angeles Times*, March 28, 2008.

¹⁰ Department of Defense officials, cited in Correction to Carol Williams, “Dispatch from Guantánamo Bay, Cuba; A day in a detainee’s life; Predictability, covert communication and isolation are hallmarks,” *Los Angeles Times*, March 28, 2008.

¹¹ Joint Task Force Guantanamo, “Camp 5 video,” video report, undated, <http://www.jtfgtmo.southcom.mil/virtualvisit/Camp5/JDG-Virtual%20Visit-Camp%205.wmv> (accessed June 6, 2008).

¹² Human Rights Watch telephone interview with Suhana Han and Michael Cooper, attorneys for Tunisian detainee (name withheld), May 9, 2008.

¹³ Human Rights Watch telephone interview with Matthew O’Hara, attorney for Guantanamo detainee Walid (full name withheld at attorney’s request), May 7, 2008; Human Rights Watch telephone interview with Suhana Han and Michael Cooper, May 9, 2008; Human Rights Watch telephone interview with Zachary Katznelson, May 20, 2008.

simply not enough time to bring all the detainees out during the day, and that often detainees do not want to go out for recreation in the middle of the day as it can be brutally hot.¹⁴

Approximately 60 detainees are currently housed in Camp 5.¹⁵

Camp 6

Completed in November 2006, Camp 6 is a \$37 million high-security detention unit with a maximum capacity of about 160 detainees.¹⁶ Modeled after a county jail in Lenawee, Michigan, it was originally designed as a medium-security facility where detainees could mingle in communal eating and recreation areas.¹⁷ It was refitted in June 2006, however, following three suicides and the reported attack on guards in Camp 4.¹⁸ Recreation areas were divided into individual cages; the communal eating area was declared off limits; and additional security provisions were installed.¹⁹

Most detainees in Camp 6 now spend at least 22 hours a day in windowless 6-foot-8-inch-by-12-foot concrete and steel cells, with solid steel doors, that contain a single bed and a combination sink-toilet. They eat all their meals in their cells, and are only allowed out for individual recreation (up to two hours a day, often at night), showers, interrogations, and attorney, medical, or ICRC visits.²⁰

¹⁴ Human Rights Watch telephone interview with staff judge advocate for JTF-GTMO (name withheld), May 14, 2008.

¹⁵ Human Rights Watch interview with Department of Defense official, May 14, 2008.

¹⁶ Joint Task Force Guantanamo, "Mission."

¹⁷ Neil Lewis, "Guantánamo Detention Site Is Being Transformed, U.S. Says," *New York Times*, August 6, 2005 (quoting the construction chief for the Guantanamo command stating that Camp 6 would "have more concern for the quality of life" than the existing prisons at Guantanamo); Amnesty International, "USA: Cruel and inhuman: Conditions of isolation for detainees at Guantanamo Bay," AI Index: AMR 51/051/2007, April 5, 2007, pp. 1-2.

¹⁸ Joint Task Force Guantanamo, "Mission"; Michelle Shephard, "The view from Guantanamo Bay," *The Toronto Star*, February 4, 2007.

¹⁹ Ibid.

²⁰ Amnesty International, "USA: Cruel and inhuman: Conditions of isolation for detainees at Guantanamo Bay," pp. 1-6; Williams, "Dispatch from Guantánamo Bay, Cuba: A day in a detainee's life; Predictability, covert communication and isolation are hallmarks," *Los Angeles Times*.



Cell inside Camp 6. © 2007 Patrick Thompson/JTF Guantanamo

Detainees have told their lawyers that the walls around the recreation areas are approximately two stories high, meaning that they rarely receive direct sunlight, even if they are taken out for recreation during the day.²¹

Several detainees have reported that when they are offered recreation during the night, which happens frequently, they are often discouraged from taking it.²²

²¹ Human Rights Watch telephone interview with Sarah Havens, attorney for Ali Yahya Mahdi al Raimi and Abdul Khaled Ahmed Sahleh al Bedani, May 22, 2008; United States Court of Appeals District of Columbia Circuit, *Huzaifa Parhat, et al. v. Robert M. Gates*, Case No. 06-1397, Declaration of Sabin Willet, January 20, 2007, paras. 22 and 24, (copy on file with Human Rights Watch); Amnesty International, “USA: Cruel and inhuman: Conditions of isolation for detainees at Guantanamo Bay,” p. 5.

²² Email communication from George Clarke, attorney for Anvar Hassan (“Ali”) and Dawut Abdurehim, to Human Rights Watch, May 22, 2008; Human Rights Watch telephone interview with Zachary Katznelson, May 19, 2008.

Detainees have also said that, depending on the guard who is on duty, they may be punished for touching each other through the chain-link fences that enclose their recreation pens.²³ They can only communicate with each other at recreation time or by yelling at each other through the gaps in their cell doors.²⁴



Camp 6 recreation area, surrounded by high walls. © 2008 Associated Press

Approximately 100 detainees are currently housed in Camp 6.²⁵

Camp 7

Very little is known about Camp 7, which houses the so-called high-value detainees who were transferred to Guantanamo from the custody of the Central Intelligence

²³ Email communication from George Clarke to Human Rights Watch, May 18, 2008; Human Rights Watch telephone interview with Jason Pinney, attorney for several Guantanamo detainees, May 13, 2008; United States Court of Appeals District of Columbia Circuit in, *Huzaifa Parhat, et al. v. Robert M. Gates*, Case No. 06-1397, Declaration of Sabin Willet, January 20, 2007, para. 22, (copy on file with Human Rights Watch); Amnesty International, “USA: Cruel and inhuman: Conditions of isolation for detainees at Guantanamo Bay,” p. 5.

²⁴ Human Rights Watch telephone interview with George Clarke, May 8, 2008; Human Rights Watch telephone interview with Seema Saifee, attorney for Abdulghappar Turkistani, May 8, 2008; Human Rights Watch telephone interview with Buz Eisenberg and Jerry Cohen, attorneys for Mohammad Abd Al Qadir and Farhi Said bin Mohammed, May 12, 2008.

²⁵ Human Rights Watch interview with Department of Defense official, May 14, 2008.

Agency (including 14 who were transferred in September 2006).²⁶ To judge by the little information that is available, however, conditions at Camp 7 are even more restrictive than those at Camps 5 and 6.

Approximately 15 detainees are believed to be held at Camp 7.²⁷

* * *

In addition, another 15 or so detainees live in shed-like buildings in Camp Echo that were previously used as interrogation and isolation units, but are now primarily used to house detainees deemed unsuitable for communal living in Camp 4. Doors to the sheds have reportedly been replaced with bars that allow in natural light, and detainees are reportedly allowed to move freely between the cell, shower area, and small interrogation room in each shed.²⁸

An additional 25 or so detainees are reportedly housed in Camp 1, which is similar in construction to Camp 3, with wire mesh cell walls that let in fresh air and light. Unlike in Camp 3, detainees are housed in adjacent cells and can communicate with each other. Guantanamo military officials report that most detainees prefer Camp 1 to Camps 5 and 6, even though some have complained about the total lack of privacy in the cells.²⁹

While conditions vary significantly from unit to unit at Guantanamo, some restrictions apply to all prisoners. Most importantly, none of the men currently held

²⁶ Prior to arriving in Guantanamo, while in CIA custody, these detainees were reportedly subject to prolonged periods of extreme isolation and other abuse. See Human Rights Watch, *Ghost Prisoner: Two Years in Secret CIA Detention*, vol. 19, no. 1(G), February 2007, <http://www.hrw.org/reports/2007/uso207/>, pp. 13-23.

²⁷ Carol Rosenberg, "'Platinum' captives held at off-limits Gitmo camp," *Miami Herald*, February 6, 2008; "Web Extra: A prison camps primer," *Miami Herald*, February 6, 2008, <http://www.miamiherald.com/news/nation/story/102770.html> (accessed June 6, 2008). Camp 7 is reportedly in a secret location at Guantanamo and operated by a separate military command from the other prison units.

²⁸ Human Rights Watch interview with Department of Defense official, May 14, 2008; Human Rights Watch telephone interview with Zachary Katznelson, May 19, 2008.

²⁹ Email communication from staff judge advocate for JTF-GTMO (name withheld) to Human Rights Watch, May 19, 2008; Human Rights Watch telephone interview with Zachary Katznelson, May 19, 2008.

at Guantanamo has ever been allowed to receive a visit from a family member or friend, and few have even been allowed to make a phone call home.³⁰



Camp 1 cell, showing the wire mesh cell walls/windows. © 2007 Joseph Scozzari/JTF Guantanamo

The consequences for family relationships are devastating. Except for censored letters (which are not much comfort to illiterate detainees), detainees have been cut off from their families for years, having almost no contact with wives, children, parents, and other loved ones. Some detainees have children whom they have not seen or spoken to since their birth, or whom they only saw years ago as infants. The policies on family contact at Guantanamo are even more restrictive than those at the detention center at the US air base in Bagram, Afghanistan—which has for the past several months allowed detainees to communicate with their families by video conference calls.³¹

³⁰ The only prisoner known to have been allowed a visit at Guantanamo was David Hicks, the one-time Australian kangaroo skinner who returned to Australia last year. His family visited Guantanamo for a military commission hearing in August 2004 and was reportedly granted a 15-minute visit with him just before the beginning of his trial. Scott Higham, "Australian Pleads Not Guilty to War Crimes," *Washington Post*, August 26, 2004.

³¹ Carlotta Gall, "Video Link Plucks Afghan Detainees from Black Hole of Isolation," *New York Times*, April 13, 2008.

The inability to make phone calls also undercuts the ability of military commission defendants to build relationships with their attorneys, and participate in and help control their own defense. While attorneys can write their clients, an exchange by mail can take several weeks—time that cannot always be spared as filing deadlines approach. The lack of phone access, coupled with the logistical difficulties of traveling to Guantanamo, has no doubt contributed to problems in establishing trusting attorney-client relationships, as evidenced by the high number of commission defendants who have at some point fired their attorneys.³²

When Ibrahim al-Qosi, a 47-year-old Sudanese man accused of serving as Osama bin Laden’s driver and bodyguard in Afghanistan, appeared before a military commission on May 22, he told the judge that he wanted to hire a civilian attorney, as allowed under the military commission rules (so long as the attorney is a US citizen and passes the security clearance). When the military judge asked if al-Qosi had a particular civilian lawyer in mind, al-Qosi explained, “I’ve been in prison here for six and a half years. I’ve had no contact with the outside world. I have no information about that.” He asked to be allowed to call his family so they could help him find a civilian lawyer through the Sudanese Bar Association. The court ordered the government to arrange the call by no later than July 1—the first opportunity al-Qosi will have had to speak to his family in his six-plus years in Guantanamo.³³

Another common factor is a dearth of useful activities—rehabilitative or educational programming—with the exception of language classes provided to detainees in Camp 4. Even access to reading material is limited to just one book at a time. The Department of Defense claims that Guantanamo’s library now holds approximately 5,000 books, including several books in Arabic and other languages spoken by detainees.³⁴ Yet several lawyers for non-Arabic-speaking prisoners have complained that, at least in the past, their clients have had very inadequate access to books in a

³² As of this writing, all but two of the 13 detainees who have been arraigned by the military commissions authorized by the US Congress have rejected their lawyers at some point in the process.

³³ Human Rights Watch, which has been granted observer status at the military commissions, was present in Guantanamo at this hearing.

³⁴ Joint Task Force Guantanamo, “Mission”; Department of Defense officials, cited in Correction to Williams, “Dispatch from Guantánamo Bay, Cuba; A day in a detainee’s life; Predictability, covert communication and isolation are hallmarks,” *Los Angeles Times*.

language they can read.³⁵ In addition, many detainees are illiterate, marginally literate, or able to read in only one language. The one-book-at-a-time policy means that detainees cannot keep both a dictionary and another book in their cell at the same time, making it very difficult for detainees to teach themselves or progress to another reading level.³⁶

In general, detainees who follow the rules are allowed certain comfort items, including a thermal shirt, pen, paper, and library privileges, in addition to the basic items that all detainees are provided. Detainees who do not follow the rules can be punished with the removal of these comfort items.³⁷ (They are allowed to keep a copy of the Koran.) One detainee—a self-styled poet—told his lawyer it was nearly impossible to write poetry anymore because the prison guards would only allow him to keep a pen or pencil in his cell for short periods of time.³⁸

The Department of Defense claims that detainees are placed in Camp 5 and Camp 6 based on their behavior, and cites a range of misconduct, including throwing “cocktails” of feces and urine at guards, head-butting guards, and staging riots, as the basis for detainees’ placement in the high-security units. JTF-GTMO officials also say detainees could earn their way to Camp 4 or other less-restrictive living environments if they were to behave properly. But whereas JTF-GTMO officials describe a “vetting process” involving multiple prison staff providing input about a particular detainee, there is no regular review process by which detainees are informed of their status, no set time period for the reviews, and no set rules or guidelines informing detainees of what they need to do, or how long they must exhibit good behavior before earning additional privileges.³⁹ Several detainees have

³⁵ Human Rights Watch telephone interviews with George Clarke, May 8, 2008; Jason Pinney, May 13, 2008; and Seema Saiffee, May 8, 2008; United States Court of Appeals District of Columbia Circuit, *Huzaifa Parhat, et al. v. Robert M. Gates*, Case No. 06-1397, Declaration of Sabin Willet, January 20, 2007, para. 18 (copy on file with Human Rights Watch).

³⁶ Human Rights Watch telephone interview with Zachary Katznelson, May 19, 2008.

³⁷ Human Rights Watch telephone interview with staff judge advocate for JTF-GTMO (name withheld), May 15, 2008; Williams, “Dispatch from Guantánamo Bay, Cuba; A day in a detainee’s life; Predictability, covert communication and isolation are hallmarks,” *Los Angeles Times*.

³⁸ Human Rights Watch telephone interview with Seema Saiffee, May 8, 2008.

³⁹ Human Rights Watch telephone interview with staff judge advocate for JTF-GTMO (name withheld), May 23, 2008.

told their lawyers that they do not know why they were moved to Camp 5 or Camp 6 and believe they have little hope of moving elsewhere.⁴⁰

The Department of Defense also notes that these detainees at Guantanamo are not technically in solitary confinement because they can yell at each other through the gaps underneath their cell doors, they can talk to one another during recreation time, and they are allowed periodic ICRC and lawyer visits. The US government points to the fact that detainees are housed in cells that contain an arrow pointing to Mecca and provided regular, high-calorie meals that all meet the halal dietary requirements as evidence that the detainees are treated with sensitivity and care. It also claims that they pray under the guidance of a detainee chosen to lead prayers.

But while these measures are positive accommodations to detainees' needs, they cannot themselves equate to "humane" treatment in view of the isolation imposed. The reality is that these men live in extreme social isolation, with little outside stimuli, and little to do all day but stare at the walls. And despite claims to the contrary, the facility has not had an imam since September 2003; and while Guantanamo officials allow detainees in Camps 5 and 6 to pray in unison, led by a chosen detainee representative, all of the detainees still remain locked in their cells.⁴¹

Some military officials at Guantanamo recognize the problems inherent in limiting detainees' social interaction, recreation time, and educational opportunities, and have told Human Rights Watch they intend to make improvements within the year. Specifically, one Guantanamo official told Human Rights Watch that he would like to change the way Camp 6 operates so that detainees can congregate in the pods between their cells, and are provided additional recreation time as well as language classes and other educational opportunities. Ultimately, he would like to create a tiered detention system, with much more regular and formalized reviews, and a "step-down program" modeled after federal prisons, whereby detainees could earn

⁴⁰ Human Rights Watch telephone interviews with staff judge advocate for JTF-GTMO (name withheld), May 15, 2008; Matthew O'Hara, May 7, 2008; and Stephen H. Oleskey, May 19, 2008.

⁴¹ Mark Buzby, "Guantanamo Is a Model Prison (Really)," *Wall Street Journal*, June 4, 2008; Email communication from Zachary Katznelson to Human Rights Watch, June 6, 2008.

their way from Camp 5, to a modified Camp 6, to Camp 4. But the official warned that it would be too dangerous to allow detainees and guards to mix freely in the open pods between the cells, and that JTF-GTMO first needed to construct a safe space (presumably a catwalk) whereby guards can monitor the detainees without being at risk of attack.⁴²



Guard standing surrounded by detainees' cells in what was intended to be a common area for detainees housed in Camp 6. © 2007 Associated Press

In the interim, most Guantanamo detainees remain locked in their cells 22 hours a day, with little in the way of recreational, vocational, or educational outlets.

⁴² Human Rights Watch telephone interview with JTF-GTMO official (name withheld), May 23, 2008.

III. Supermax Prisons and the Psychological Effects of Isolation

Conditions at Camps 5 and 6 are in many ways akin to those at supermaximum-security prisons in the United States. (This also seems true for Camp 7, to the limited extent conditions at Camp 7 are known.) Prisoners in US supermaxes are generally held alone in small, often windowless cells with solid steel doors for more than 22 hours a day.⁴³ Their opportunities for social interaction or other meaningful activity are dramatically limited.

Numerous studies have concluded that extended periods of detention in supermax-like conditions can cause significant psychiatric harm. The absence of social and environmental stimulation has been found to lead to a range of mental health problems, ranging from insomnia and confusion to hallucinations and psychosis.⁴⁴ Stuart Grassian, a psychiatrist specializing in conditions of confinement who has evaluated hundreds of inmates in different prisons, warns that even inmates with no prior history of mental illness can become “significantly ill” when subjected to prolonged periods of isolation.⁴⁵

Predictably, the isolation common in supermax facilities has been found to produce a higher rate of psychiatric and psychological health problems than imprisonment in

⁴³ See, generally, Human Rights Watch, *Out of Sight: Super-Maximum Security Confinement in the United States* (New York: Human Rights Watch, 2000), <http://www.hrw.org/reports/2000/supermax/>; Human Rights Watch, *Ill-Equipped: US Prisoners and Offenders with Mental Illness* (New York: Human Rights Watch, 2003), <http://www.hrw.org/reports/2003/usa1003/>; Human Rights Watch, *Cold Storage: Supermaximum Security Confinement in Indiana* (New York: Human Rights Watch, 1997), <http://www.hrw.org/reports/1997/usind/>. Prisoners in some supermaximum security prisons are only allowed five hours of recreation time per week, even less than allowed at Guantanamo, and have even fewer opportunities for social interaction with other prisoners. A few supermaxes, however, hold inmates in two-person cells.

⁴⁴ See, for example, Peter Scharff Smith, “The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature,” *Crime and Justice*, vol. 34 (2006); Lorna Rhodes, “Pathological Effects of the Supermaximum Prison,” *American Journal of Public Health*, vol. 95, no. 10 (2005); Brief of Amici Curiae Professors and Practitioners of Psychology and Psychiatry, *Wilkinson v. Austin*, 545 U.S. 209 (2005) (No. 04-4995); Jesenia Pizarro and Vanja Stenius, “Supermax Prisons: Their Rise, Current Practices and Effect on Inmates,” *Prison Journal*, vol. 84 (2004); Craig Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” *Crime and Delinquency*, vol. 49, no. 1 (2003); International Psychological Trauma Symposium, “Statement on the use and effects of solitary confinement,” Istanbul, December 9, 2007.

⁴⁵ Stuart Grassian, “Psychiatric Effects of Solitary Confinement,” *Washington University Journal of Law and Policy*, vol. 22 (2006), pp. 327, 352-53.

units where inmates are allowed group recreation, communal meals, and other regular interaction with each other.⁴⁶

This research has been cited by several federal court opinions warning of the negative psychological impact of isolation in prison. In 1995 a federal court examining the Security Housing Unit (SHU) of the Pelican Bay State Prison—a California supermax—found that “many, if not most, inmates in the SHU experience some degree of psychological trauma in reaction to their extreme social isolation and the severely restricted environmental stimulation in the SHU.”⁴⁷

The SHU inmates were, according to prison authorities, “the worst of the worst” and represented the “greatest threat to prison security and safety.”⁴⁸ The inmates were confined to their 80-square-foot cells for 22½ hours a day. There were no outside windows, and the only natural light that filtered through to the cells came from a skylight in the area outside the cell door.⁴⁹ Five times a week prisoners were given the option of spending an hour-and-a-half in a small exercise pen with cement floors, which had 20-feet-high walls and provided some access to fresh air through a roof screen.⁵⁰ They could send and receive mail, but were not permitted to make telephone calls.⁵¹

The court concluded that the severe deprivation of human contact and lack of environmental stimulation at the SHU “press[ed] the outer bounds of what most humans can psychologically tolerate” and constituted cruel and unusual punishment for those inmates who were already mentally ill or who were at risk for suffering very serious or severe injury to their mental health.⁵² As the court explained:

⁴⁶ Smith, “The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature,” *Crime and Justice*, p. 456; Rhodes, “Pathological Effects of the Supermaximum Prison,” *American Journal of Public Health*, p. 1693.

⁴⁷ *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995), p. 1235.

⁴⁸ *Ibid.*, pp. 1155 and 1227.

⁴⁹ *Ibid.*, p. 1228.

⁵⁰ *Ibid.*, pp. 1228 and 1230.

⁵¹ *Ibid.*, p. 1230.

⁵² *Ibid.*, p. 1267.

“[I]t is well established that severe reduction in environment stimulation and social isolation can cause serious psychiatric consequences.”⁵³

Other courts have similarly warned of the negative effects of isolating conditions of confinement, in which detainees are deprived of occupational and social stimulation.⁵⁴

It should be noted that prisoners held in high-security units at Guantanamo—none of whom have been convicted of a crime—in some ways endure even more draconian conditions than do convicted criminals housed in supermax prisons in the United States. For example, prisoners at the California SHU were able to leave their pods to go to a law library, where they were able to read in individual library cells.⁵⁵ They were also allowed to buy radios and televisions for their cells, and could request counseling, prayer, or Bible study visits.⁵⁶ Two-thirds were double-celled, and they were allowed visits from family members.⁵⁷

Even prisoners at ADX-Florence enjoy certain privileges that are denied detainees at Guantanamo. The country’s only federal supermax prison, ADX-Florence houses convicted criminals believed to pose the greatest national security threats—men like Zacarias Moussaoui, the September 11 conspirator; Richard Reid, the would-be shoe bomber; and Ramzi Yousef, the terrorist operative responsible for the 1993 World Trade Center bombing; all of whom are serving life sentences.

⁵³ *Ibid.*, p. 1232.

⁵⁴ *Jones’el v. Berge*, 164 F. Supp. 2d 1096 (W.D. WI 2001), p. 1101 (“Confinement in a supermaximum security prison such as Supermax is known to cause severe psychiatric morbidity, disability, suffering and mortality [even among those] who have no history of serious mental illness and who are not prone to psychiatric decompensation (breakdown)”; *Koch v. Lewis*, 216 F. Supp. 2d 994 (D. Ariz. 2001), p. 1001 (noting that even the government’s expert “agreed that extended isolation... subjects the inmate to heightened psychological stressors and creates a risk for mental deterioration”); *McClary v. Kelly*, 4 F.Supp.2d 195 (W.D.N.Y.1998), p. 208 (“[the notion that] prolonged isolation from social and environmental stimulation increases the risk of developing mental illness does not strike this Court as rocket science”); *Ruiz v. Johnson*, 37 F.Supp.2d 855 (S.D.Tex.1999), p. 907, *rev’d on other grounds*, 243 F.3d 941 (5th Cir.2001), *adhered to on remand*, 154 F.Supp.2d 975 (S.D.Tex.2001) (describing administrative segregation units as “virtual incubators of psychoses-seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities”).

⁵⁵ *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995), p. 1229.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

Because these men have been determined to pose specific security threats, they are subject to what are known as “special administrative measures” on top of the regular restrictions that all inmates face. Yet, even they—like all other inmates in ADX-Florence—are provided televisions in their cell, which offer limited outside programming (including The Discovery Channel), as well as educational and religious materials that are broadcast over in-house TV channels. All inmates’ educational needs are regularly evaluated so that detainees can be provided educational programming in accordance with their needs.⁵⁸

All ADX-Florence inmates, even those who raise heightened security concerns, are allowed one to two phone calls per month, in addition to legal calls. In fact, even those subject to special disciplinary measures are allowed a phone call every 90 days. All inmates—even those under special administrative measures—are also allowed up to five monthly visits by family members and friends, as long as the visitor has been pre-approved.⁵⁹ Those subject to specific disciplinary measures are still allowed their monthly visits, albeit via non-contact video visiting.⁶⁰ The contrast with policies at Guantanamo is stark.

⁵⁸ Human Rights Watch telephone interview with Chris Synsvoll, legal office, ADX-Florence, Florence, Colorado, May 15, 2008.

⁵⁹ *Ibid.*; United States Penitentiary, Administrative Maximum Facility, Florence, Colorado, “Telephone Regulations for Inmates,” Institutional Supplement, FLM 5264.07D, April 20, 2007, pp. 3-4; United States Penitentiary, Administrative Maximum Facility, Florence, Colorado, “Visiting Procedures,” Institutional Supplement, FLM 5267.08A, March 5, 2008, p. 1.

⁶⁰ United States Penitentiary, Administrative Maximum Facility, Florence, Colorado, “Visiting Procedures,” p. 5.

IV. Cases⁶¹

Walid⁶²

Walid is a 28-year-old Palestinian. Reportedly sold to the United States by the Pakistani security forces, Walid was among the first arrivals to Guantanamo Bay in early 2002. As of February 2008, he was “approved to leave” yet he continues to be housed in high-security Camp 5, where he has been held since early 2007.⁶³

Since his arrest, Walid has had very little contact with his family, who thought he was dead until, several years after his initial detention, he was able to send them a postcard. He has not, to his lawyer’s knowledge, been able to speak with any of his family members. Since learning of his whereabouts in 2005, his family has been writing to him and has sent him photos—including pictures of nieces and nephews he has never met.

Around 2003 or 2004 Walid went on a hunger strike for 20 months and was force-fed through intubation. At one point Walid, who is approximately 5 feet 10 inches tall, weighed only 96 pounds.⁶⁴

His attorneys report that they have long been worried about Walid’s mental health, which they believe has been deteriorating over time. They describe him as lethargic, listless, and distracted, and took the following notes of his speech:

I love cowboys. I love Indians. I feel like they’re my family.... I knew an Indian woman in Gaza—she talked a witch language. I won’t tell you her name because she might send me a witch curse.... Tarzan is a

⁶¹ As noted above, information about the detainees comes from their attorneys and cleared notes that they have shared with Human Rights Watch. The Department of Defense does not allow Human Rights Watch (or any other nongovernmental organization – except for the ICRC – or journalist) to interview any of the detainees still held in Guantanamo.

⁶² Walid’s full name is not included in order to protect his privacy and at his attorney’s request.

⁶³ Email communication from Navy Commander Bree Ermentrout, staff judge advocate to Matthew O’Hara (attorney for Walid), February 7, 2008; Human Rights Watch telephone interview with Matthew O’Hara, May 7, 2008.

⁶⁴ Human Rights Watch telephone interview with Matthew O’Hara, May 7, 2008.

lovely person—very polite—he’s my friend, though he doesn’t [know] it. I don’t watch for entertainment but for another reason—a secret—I won’t tell you.... I live in heaven, heaven is in my chest. I love Jesus, I want to see him, and all the mermaids around them.⁶⁵

After the US denied Walid’s lawyers’ requests to release Walid’s medical records, and knowing that they would not be allowed to bring in an independent psychiatrist to evaluate Walid in person, they turned to their next-best option. They retained Dr. Daryl Matthews, a psychiatrist once hired by the Department of Defense to evaluate the mental health facilities at Guantanamo, and asked him to prepare a questionnaire by which he could do a proxy psychological assessment of Walid. Based on the results of this questionnaire, Dr. Matthews has concluded that Walid appears to have developed schizophrenia, and suffers from delusions, significant anxiety, and depression.

Dr. Matthews noted that the “development of a psychotic illness such as schizophrenia is one of the known adverse consequences, albeit relatively infrequent, in populations exposed to isolation and other forms of severe maltreatment in confinement.” Dr. Matthews believes that Walid’s condition will only deteriorate while confined at Guantanamo.⁶⁶

The Group of Uighurs

In 2001 a group of 18 Uighurs, an ethnic minority from Xinjiang province in western China, was living together in a camp in Afghanistan when the coalition bombing started. They claim that they fled to the Afghan mountains, were led across the border to Pakistan by some other travelers, and were sold to the United States for a bounty. Another five Uighurs also ended up in Guantanamo, possibly sold to the US as well.

Most of these men have been cleared for release since 2003, yet remain in Guantanamo because they cannot be returned to China, and neither the United

⁶⁵ Letter from Dr. Daryl B. Matthews, M.D., Ph.D., to Matthew O’Hara, March 7, 2008 (copy on file with Human Rights Watch).

⁶⁶ Ibid.

States nor any other country has been willing to take them in. To its credit, the United States has concluded that it cannot return these men to China due to the risk that they would be tortured upon return. State Department Legal Advisor John Bellinger has said that: “The United States has made extensive and high-level efforts over a period of four years to try to resettle the Uighurs in countries around the world.”⁶⁷ While five of the Uighurs were resettled in Albania in 2005, another 17 remain—housed in one of the most draconian facilities in Guantanamo: Camp 6.⁶⁸

Previously held in less-restrictive conditions, these men were moved to Camp 6 in May 2007 after some reportedly threw feces and urine at prison guards following a dispute about the Koran. But rather than imposing a 30- or 90-day punishment, as is common in US prisons, military authorities moved them to Camp 6 for an indefinite period of time.⁶⁹

As of April 2008—almost a full year later—these men have been moved to their own wing of Camp 6, where they are reportedly allowed to keep the slots in the door for meals open most of the day, so that they can more easily speak to each other without shouting. JTF-GTMO also reports that they are now being granted additional recreation time, including the chance to go into a single recreation pen with another detainee, and that ultimately they will be able to leave their cells during the day and mingle in the common space in the pods.⁷⁰ For now, however, they still spend the majority of their days locked in their totally enclosed, windowless cells, unable to congregate for meals or prayer time, and unable to see each other as they talk through the meal slots.⁷¹

In December, before being moved to the “Uighur wing” of Camp 6, an approximately 20-year-old Uighur man named Abdulghappar, who has reportedly been cleared for

⁶⁷ Quoted in Tim Golden, “Chinese leave Guantanamo for Albanian Limbo,” *New York Times*, June 10, 2007.

⁶⁸ Another Uighur was transferred to Saudi Arabia in 2006. As of this writing, 16 of the remaining 17 Uighurs have reportedly been cleared for release.

⁶⁹ Only one Uighur, Abdunnassir, has been moved from Camp 6. In late 2007 he was transferred to Camp 4. Human Rights Watch telephone interview with Jason Pinney, May 13, 2008.

⁷⁰ Human Rights Watch telephone interview with JTF-GTMO official (name withheld), May 15, 2008.

⁷¹ Human Rights Watch interview with Department of Defense official, May 14, 2008.

release, wrote to his attorneys. In his letter, he described the impact of months of isolation on his physical and mental state:

We were very pleased at the beginning when the Pakistanis turned us over to American custody. We sincerely hoped that America would be sympathetic to us and help us. Unfortunately, the fact was different. Although in 2004 and 2005 we were told that we were innocent, however, we are being incarcerated in jail for the past 6 years until present. We fail to know why we are still in jail here. We are still in the hope that the US government will free us soon and send us to a safe place. Being away from family, away from our homeland, and also away from the outside world and losing any contact with anyone, also being forbidden from the natural sunlight, natural air, being surrounded with a metal box all around is not suitable for a human being. I was very healthy in the past. However, since I was brought to Camp 6, I got rheumatism and my joints started to hurt all the time and are getting worse. My kidney started to hurt for the past 10 days. My countryman Abdulrazaq used to have rheumatism for a while and since he came to Camp 6, it got worse. Sometime in early August, the US army has told Abdulrazaq that he is cleared to be released and also issued the release arrival in writing to him. Hence, Abdulrazaq requested to move him to a better conditioned camp for his health reasons and when it was being ignored he started to go on hunger strike for over a month now. Currently, he is on punishment and his situation is worse and he is being shackled down to the chair and force fed twice a day by the guards, that wear glass shields on their faces, for the past 20 days. For someone who has not eaten for a long time, such treatment is not humane. Abdulrazaq would never want to go on hunger strike however the circumstances here forced him to do so as he had no other choice. If the oppression was not unbearable, who would want to throw himself on a burning fire?

... Recently, I started to wonder, why are we staying in this jail for so long? I wonder if we will be released after we damage our internal and

external organs and arms and legs. Or is it necessary for a few Turkistanis to die as it happened in the past here in this jail in order to gain others' attention and their concern toward our matter? Such thoughts are in my mind all the time. The reason I am writing this letter to you is that, I sincerely hope you and related law and enforcements solve this issue quickly and help us in a practical manner.

—Abdulghappar Turkistani (281), December 12, 2007, Guantanamo Bay jail, Camp 6⁷²

In April, Huzaifa Parhat, another Uighur who was reportedly determined eligible for release over four years ago, described his daily routine to his lawyer, who wrote:

Wake at 4:30 or 5:00. Pray. Go back to sleep. Walk in circles—north, south, east, west—around his 6-by-12 foot cell for an hour. Go back to sleep for another two or more hours. Wake up and read the Koran or look at a magazine (written in a language that he does not understand). Pray. Walk in circles once more. Eat lunch. Pray. Walk in circles. Pray. Walk in circles or look at a magazine (again, in a foreign language). Go back to sleep at 10:00 p.m.

The next day is the same except that the detainee may leave his cell for two hours of recreation in a slightly larger pen or for a shower.⁷³

A Uighur named Abdusemet described days on end of doing nothing other than eating, praying, pacing, and sitting on his bed. “I am starting to hear voices, sometimes. There is no one to talk to all day in my cell and I hear these voices,” Abdusemet told his lawyer, worriedly. “What did we do? Why do they hate us so much?” he asked.⁷⁴

⁷² Letter from Abdulghappar Turkistani to his attorneys, May 8, 2008, provided to Human Rights Watch by Seema Saifee.

⁷³ Human Rights Watch telephone interview with Jason Pinney, attorney for Huzaifa Parhat, May 13, 2008; Attorney notes from April 2008 visit, before Parhat was moved to the “Uighur” wing of Camp 6, provided to Human Rights Watch by Jason Pinney.

⁷⁴ United States Court of Appeals District of Columbia Circuit, *Huzaifa Parhat, et al. v. Robert M. Gates*, Case No. 06-1397, Declaration of Sabin Willet, January 20, 2007, paras. 34 and 42, (copy on file with Human Rights Watch).

Abdulli Feghoul

Feghoul, an Algerian reportedly handed over to the US by Pakistani security forces and sent to Guantanamo in 2002, was informed over a year ago that he was cleared to leave Guantanamo. Yet he remains in Camp 6, having been moved there in December 2006.

In April 2007 he told his lawyers: “It seems that I am buried in my grave.” Five months later, in August, he was reportedly given the false impression that he was going home, having been taken to another camp, measured for clothes, and told he would be traveling within 24 hours. The next day, however, he was returned to Camp 6, where he has been held ever since.

As of February 2008, Feghoul had not been allowed a single phone call home in his more than six years of detention. Feghoul told his lawyers that the Red Cross brought him photos of his family in early 2008, but that the prison guards searched his cell and took two of the photos away. He told his lawyer he did not know why they were taken and that they had not been returned as of February 2008, when his lawyers last visited him.

Feghoul’s lawyers report that he is experiencing increasing difficulty coping with the psychological and physical effects of the profound isolation in Camp 6.⁷⁵

Saber Lahmar

Lahmar, a 39-year-old Bosnian-Algerian, is a university-educated father of two who once taught at the Islamic Cultural Center in Bosnia. In 2001 the Bosnian government arrested Lahmar and detained him for three months on charges that he was part of an al-Qaeda cell that was plotting to bomb the US embassy in Sarajevo, Bosnia and Herzegovina’s capital city. Although the Bosnian Supreme Court eventually ordered his release due to lack of evidence, he was immediately picked up by Bosnian police and transferred to US custody. By early 2002, the United

⁷⁵ Human Rights Watch telephone interview with Shawn Nolan, attorney for Abdulli Feghoul, May 14, 2008.

States brought Lahmar to Guantanamo Bay, and he has been imprisoned there ever since.⁷⁶

He has never seen—or ever even spoken with—his second child, who was born after he was initially detained in Bosnia.⁷⁷

Since 2006 Lahmar has been housed in extreme isolation, with virtually no human contact other than with the prison guards and occasional medical staff or interrogators. From June 2006 to November 2007 he was housed in an 8-by-6-foot cell in Camp Echo, with the only window in his cell painted black so that he would not be exposed to any natural light. His lawyers report that he was denied paper and pen, allowed no reading material other than the Koran, rarely allowed out of his cell, and given only a sheet to sleep with at night, which was taken away in the morning.

Sometime around November 2007 Lahmar was moved to Camp 3, where he continues to be housed 22 hours a day in a single cell, with nothing to occupy his time other than his Koran. He cannot speak to other detainees over the noise of machines that many detainees believe is designed to prevent them from communicating with each other. Even his recreation time is totally solitary.

Prior to being moved to Camp Echo, Lahmar suffered leg muscle atrophy due to lack of exercise. A JTF-GTMO doctor reportedly told him that he needed to exercise more often, yet instead he was moved to Camp Echo, where he was rarely provided recreation time during the more than 18 months he was held there, according to information provided to his attorneys.

Lahmar now reports that he is going blind in his left eye, a result that he attributes to being housed in cells with fluorescent lights on 24 hours a day.

Even before being moved to Camp Echo, Lahmar's lawyers worried about his mental health. His lawyers say that Lahmar's mental health has deteriorated significantly

⁷⁶ European Court of Human Rights, *Saber Lahmar v. Bosnia and Herzegovina*, Application no. 2141/07, Claim for Just Satisfaction Detailed Description, March 12, 2008, pp. 2-3 (copy on file with Human Rights Watch).

⁷⁷ *Ibid.*, p. 2.

during his years in extreme isolation in Camp Echo and Camp 3, and that he has become seriously depressed.

Over a year ago, in April 2007, Lahmar's lawyers wrote a letter to Terry Henry and Andrew Warden at the Department of Justice, raising serious concerns about Lahmar's conditions of confinement and their impact on his physical and mental health (attached as Appendix). As of this writing, the lawyers still have not received a response.⁷⁸

Oybek Jamoldinivich Jabbarov

Jabbarov is a 30-year-old Uzbek national who has been cleared for release since at least February 22, 2007. Reportedly sold to the United States by Afghan soldiers, Jabbarov has been in US custody since October 2001 and held at Guantanamo since June 2002.

Jabbarov told his lawyers that, shortly after he arrived at Guantanamo, a Federal Bureau of Investigation agent informed him that US authorities knew his capture had been a mistake and that he would be freed very soon.⁷⁹ In February 2007 Jabbarov received official notice that he was approved to leave Guantanamo.

However, Uzbekistan is a country with a known record of torture, and Jabbarov, who was reportedly visited by Uzbek officials in September 2002 and threatened with torture, has a credible fear of return, which the United States has recognized.⁸⁰ But neither the US nor any third-party country is yet willing to take him, and Jabbarov remains at Guantanamo. Even though he has been approved to leave Guantanamo, his conditions of confinement have worsened.⁸¹

⁷⁸ Human Rights Watch telephone interview with Stephen H. Oleskey, attorney for Saber Lahmar, May 20, 2008; Email communication from Matthew Bryson to Human Rights Watch, May 21, 2008.

⁷⁹ Human Rights Watch telephone interview with Michael Mone, attorney for Oybek Jamoldinivich Jabbarov, April 6, 2008.

⁸⁰ The 2007 State Department Country Reports on Human Rights Practices noted that security forces in Uzbekistan "routinely tortured, beat, and otherwise mistreated detainees under interrogation to obtain confessions or incriminating information." US State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices - 2007: Uzbekistan," March 11, 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100623.htm> (accessed June 6, 2008); Human Rights Watch telephone interview with Michael Mone, May 12, 2008.

⁸¹ To its credit, the US has recognized Jabbarov's credible fear of return, is not planning to repatriate him to Uzbekistan, and is instead seeking to resettle him elsewhere.

For most of the time Jabbarov has been held in Guantanamo, he was housed with “compliant” detainees in Camp 1. But in May 2007 he suffered a herniated disc and underwent back surgery. Following the surgery, Jabbarov was confined to a wheelchair and given a catheter for urinating. Concerned about bugs and infection in a camp exposed to the open air, and wanting to be someplace more wheelchair accessible, Jabbarov told his attorney that he requested to be moved, and he was placed in Camp 5.

By October 2007 Jabbarov—able to use a walker and feeling somewhat better—reportedly asked guards if he could be moved back to Camp 1 or Camp 4. He explained that he needed to interact with others who could aid him in walking and stretching out his back and legs. Jabbarov told his lawyer that the guards refused and said that he was being held in Camp 5 as punishment.⁸²

In January 2008 Jabbarov’s habeas counsel hand-delivered a letter to the JTF Guantanamo commander, requesting that Jabbarov be moved out of Camp 5; he claims that he never received a response. In March 2008 he again asked that Jabbarov be transferred to Camp 1 or Camp 4 and that he receive physical therapy for his back. At the end of April, Jabbarov wrote his attorney that he is now receiving some limited physical therapy. Yet, Jabbarov remains in Camp 5.⁸³

Jabbarov has told his lawyer that the recreation area in Camp 5 has a tarp covering it, so he never gets to feel the sun, and that he longs to feel the warmth of the sun on his body. He said also that whenever he is moved, for visits to the hospital or visits with his lawyer, he always sneaks glances of the ocean.⁸⁴

Jabbarov has a wife and two children—both boys—ages eight and six. He has never laid eyes upon—or spoken with—his youngest son.⁸⁵

⁸² Human Rights Watch telephone interview with Michael Mone, May 12, 2008.

⁸³ Email communication from Michael Mone to Human Rights Watch, May 16, 2008.

⁸⁴ Human Rights Watch telephone interview with Michael Mone, May 12, 2008.

⁸⁵ Human Rights Watch telephone interview with Michael Mone, January 15, 2008.

Ahmed Belbacha

Belbacha is a 39-year-old Algerian who fled to Britain in 1999 after his life was reportedly threatened by Islamist extremists. Belbacha states that he went to Pakistan in 2001 to study religion. In December 2001 he was reportedly apprehended by villagers near Peshawar, in northwest Pakistan, and sold to the United States for a bounty. He was flown to Guantanamo in March 2002.

Belbacha received official notice that he was “approved to leave” Guantanamo in February 2007. But he is so fearful of returning to Algeria—a country with a known record of torture—that he has asked US federal courts to block his return. In March 2008 a federal appellate court reversed a lower court’s refusal to do so, and sent the case back to the lower court for further consideration.⁸⁶

In the meantime, Belbacha remains housed in Camp 6, where he has been since it opened in December 2006.

In December 2007 Belbacha reportedly tried to commit suicide and was temporarily moved to the mental health unit, where he was held for two months. Put on suicide watch, he was stripped naked and given a green plastic rip-proof suicide smock and placed in an individual cell under constant monitoring. He says he was given absolutely nothing else in his cell: no toothbrush, no soap, no books, nothing he could somehow use to injure himself.

Each morning a member of the mental health staff reportedly came by and asked the same set of questions: “Do you want to hurt yourself? Do you want to hurt anyone else? Are you sleeping well? Are you eating well?”

In January 2008 Belbacha was moved out of the mental health unit—and back to Camp 6. “I feel like I’m being buried alive,” Belbacha told his lawyer, soon after his return to Camp 6.

⁸⁶ *Belbacha v. Bush*, 520 F.3d 452 (D.C. Cir. 2008).

Belbacha's parents still live in Algeria. He has not spoken to them since being turned over to US forces over six years ago. He tells his lawyers that he is too depressed to write them.⁸⁷

Mohammad El Gharani

Truly the forgotten child in Guantanamo, El Gharani, a now-21-year-old Chadian who was born and raised in Saudi Arabia, was arrested in a mosque in Karachi, Pakistan and eventually brought to Guantanamo in early 2002. Although he was just 15 upon arrival, he was wrongly classified as 25 and held as an adult.

El Gharani has been in Camp 5 and Camp 6 for the best part of two years.

He has tried to commit suicide at least seven times. He has slit his wrist, run repeatedly headfirst into the sides of his cell, and tried to hang himself. On several occasions, he has been put on suicide watch in the mental health unit, given the green suicide smock, and placed in a single cell with no other items other than toilet paper. Each time, he has been moved out of the suicide unit and back into Camp 5 or Camp 6.

El Gharani, who is described by his lawyers as extremely bright, has taught himself English.

He claims that the first English word he learned was “nigger,” and that he has been subject to repeated racial harassment since he arrived in Guantanamo. In fact, two guards have reportedly been investigated and disciplined for racially harassing El Gharani during the middle of 2007—a time during which El Gharani tried to kill himself twice. El Gharani reports, however, that he still sometimes sees the two guards on his cell block.

Often subject to punishment for reported disciplinary problems, El Gharani says he is often left with nothing in his cell other than a mat for sleeping, the Koran, and toilet paper. He says that at times even some of the basic items that all detainees are

⁸⁷ Human Rights Watch telephone interview with Zachary Katznelson, attorney for Ahmed Belbacha, May 19, 2008.

reportedly allowed at all times—including a finger tooth brush and small bar of soap—have been taken away.

He has never been provided any educational or additional recreation opportunities in accordance with his juvenile status at the time of capture. He has never been allowed to speak with—let alone see—any of his family members during his more than six years in US custody.

El Gharani claims that his eyes are being damaged due to the fluorescent lights kept on in his cell 24 hours a day.⁸⁸

Ayman Al Shurafa

Al Shurafa is a 33-year-old Palestinian national born and raised in Saudi Arabia. Although Al Shurafa has been cleared to leave Guantanamo since at least February 2007, Saudi Arabia will not resettle him because he is not a Saudi citizen. While extended family members in Gaza are willing to take him in, the United States is not currently resettling anyone there.

Meanwhile, Al Shurafa remains in Camp 5, where he has been for almost three years. In February 2008 he told his lawyer that he had asked the Guantanamo Bay medical staff for medication to “let the days go by without feeling anything.” Although Al Shurafa has been given anti-depressants on and off, he was not receiving them in February.

Contributing to his emotional distress, Al Shurafa has suffered for many years from vitiligo, a skin disease that causes him to lose pigmentation in his skin, so that he looks as if he has been burned or bleached. Al Shurafa reports that several Guantanamo doctors have prescribed ointments or other treatments for the disease, but that he has never received any of the prescriptions.

Al Shurafa, who reportedly loves to do artwork, was given paper and colored pencils from his interrogators throughout most of 2007. But in February 2008 Al Shurafa

⁸⁸ Human Rights Watch telephone interview with Zachary Katznelson, attorney for Mohammad El Gharani, May 29, 2008.

reported that the guards no longer let him keep the paper and pencils in his cell, saying they were against the rules. Now he reportedly spends most of the day sitting and staring at the walls with nothing to do.

Al Shurafa told his lawyers: “Being away from my family is like a death sentence.” Yet he has never been allowed a phone call home, and has even stopped responding to letters from his mother, brothers, and sisters. “What can I say to them? Nothing happens to me that is good. Nothing happens that I can say anything about,” he explained to his lawyer.⁸⁹

B⁹⁰

B, a 46-year-old man, was transported to Guantanamo in 2002 where he has been ever since.

B is now being held in Camp 6. Previously, he spent close to two years in Camp 5.

Although B had no pre-existing history of psychiatric illness, his lawyers report that prolonged and isolated confinement has had a devastating impact on his mental health. Over the course of his incarceration, he has become increasingly depressed, which has been worsened by an increasing feeling of guilt, as he has come to believe that his detention is a punishment from God for his minor personal misdeeds and failings.

B’s lawyers report that he has begun to hallucinate, hearing voices or noises and seeing images that are not there. At times he reportedly beats his head against the wall.⁹¹

Out of concern for B’s health, his lawyers arranged for a psychiatrist who had once been recruited to work for the Department of Defense and has visited the detention facility in Guantanamo, to perform two proxy psychiatric assessments—one in 2005

⁸⁹ Human Rights Watch telephone interview with Zachary Katznelson, attorney for Ayman Al Shurafa, May 19, 2008.

⁹⁰ Name and nationality withheld at attorney’s request.

⁹¹ Human Rights Watch telephone interview with Stephen H. Oleskey, attorney for B, May 12, 2008.

and one in 2007.⁹² (The US would not allow the psychiatrist to return to Guantanamo to do the examination in person.) The results were alarming:

Mr. [B]'s psychiatric symptoms have expanded and worsened in the past two years. He now appears to meet the clinical criteria for both Post Traumatic Stress Disorder and Major Depressive Disorder with Mood Congruent Psychotic Features. These disorders represent both a quantitative and qualitative worsening of his condition. They are major anxiety and mood disorders, respectively, and are serious mental illnesses. As a result of his continued detention, isolation, and maltreatment, he has begun to lose touch with reality (become psychotic) in addition to experiencing an expanding array of painful and incapacitating psychiatric symptoms.

The psychiatrist concluded that as long as B's conditions of confinement remain the same, his psychiatric condition will likely deteriorate further, leading to an increased risk of suicide.⁹³

To make matters worse, B, whose eyesight has significantly deteriorated during the time he has been in Guantanamo, has been told by a Guantanamo doctor that there is nothing they can do and that he will eventually go blind. B also reportedly suffers from extreme stomach pain, persistent migraines, and recurring kidney stones.

He has never been allowed to speak to his family during the more than six years he has been in US custody.⁹⁴

Mohammed Jawad

Jawad, a 22- or 23-year-old Afghan (he does not know his exact birth date), has been in US custody since he was 17. He was captured by Afghan police on December 17, 2002, and handed over to US forces the same day. According to his military defense

⁹² The psychiatrist's name has been withheld at the request of B's attorney.

⁹³ Letter from psychiatrist to attorney Stephen H. Oleskey, January 29, 2008, p. 2 (copy on file with Human Rights Watch).

⁹⁴ Human Rights Watch telephone interview with Stephen H. Oleskey, May 19, 2008.

lawyer, Jawad was briefly held at Bagram Air Base and transported to Guantanamo in January 2003.

Although other children detained at Guantanamo were given special housing and education programs, and were eventually released to rehabilitative programs in Afghanistan, the United States ignored Jawad's status as an alleged juvenile offender. He was housed with adults and reportedly subjected to psychologically manipulative interrogations, including being moved from cell to cell and deprived of sleep, a process that has been described as the "detainee frequent flier program." On December 25, 2003, about 11 months after arriving at Guantanamo, Jawad reportedly tried to commit suicide by hanging himself by his shirt collar.

Jawad received minimal if any educational programming or rehabilitative assistance. After more than five years in Guantanamo, he remains functionally illiterate.

It is unclear in which camps Jawad has been held over the years. During his two appearances before military commissions, he has said that he has lost track of time and cannot remember where he was held at which times. However, he is currently being held in Camp 6.⁹⁵

In October 2007 the US government announced that it was charging Jawad with attempted murder for throwing a grenade into a US army vehicle that injured two US soldiers and their Afghan interpreter in December 2002. He was formally charged before a military commission in January 2008.

When Jawad tried to boycott his March 12 arraignment before the military commissions, he was forcibly extracted from his cell and brought to court in shackles. He told his military defense counsel, Major David Frakt, that he was subsequently punished by the removal of "comfort items"—such as a T-shirt, one of his two styrofoam cups, and his book.⁹⁶

⁹⁵ Email communication from Maj. David Frakt, attorney for Mohammed Jawad, to Human Rights Watch, May 22, 2008.

⁹⁶ Human Rights Watch interview with Maj. David Frakt, Guantanamo Bay, Cuba, May 7, 2008; Email communication from Maj. David Frakt to Human Rights Watch, June 10, 2008.

At his May 8 appearance before the military commission, Jawad complained that he cannot even communicate with those in the cells near him because he is surrounded by Arabs and he speaks Pashto, not Arabic. “There were some Afghans, but they were far away,” he told the commission.⁹⁷

Frakt informed the military commission judge that he is extremely concerned about Jawad’s mental state. He said that Jawad appears to have lost track of time and lost touch with reality, that he suffers from severe depression and headaches, which he attributes to the fluorescent lights that are left on in his cell 24 hours a day, and that he has very little understanding of the legal process at Guantanamo. He told the commission that he had serious concerns as to whether Jawad was capable of aiding in his defense, and requested that his client be taken out of Camp 6 and moved to a “quiet, restful place where he can rehabilitate.” He also requested that Jawad be examined by a mental health professional. The judge, Colonel Peter Brownback, asked Frakt to put the requests in writing, and in the meantime, Jawad is still being housed in Camp 6.⁹⁸

Salim Hamdan

Hamdan, a 37-year-old Yemeni, was one of the first detainees to be charged during the first round of military commissions authorized by President Bush. Hamdan successfully challenged the military commission system, winning before the US Supreme Court in June 2006. Four months later, however, President Bush signed the Military Commissions Act of 2006 into law, authorizing a new set of commissions. Hamdan, who has been charged with material support for terrorism and conspiracy to commit terrorism based on allegations that he served as one of Osama bin Laden’s drivers and bodyguards and transported surface-to-air missiles for al-Qaeda, is now slated to be the first detainee to go on trial before these commissions. His trial is set to begin in July 2008.

Hamdan’s lawyers have argued that he has been so traumatized by his conditions of confinement that he can no longer help in his own defense. “He is frequently unable

⁹⁷ Human Rights Watch, which has been granted observer status at the military commissions, was present in Guantanamo at this hearing.

⁹⁸ Ibid.

to focus on any real discussion of the case, instead focusing on his conditions of confinement and our failure to improve them,” explained one of Hamdan’s lawyers in an affidavit filed before a military commission.⁹⁹ At his last hearing in April 2008, Hamdan announced his intent to boycott the trial.

Dr. Emily Keram, a psychiatrist who visited Hamdan on three occasions from May 2005 through February 2008, concluded that he was suffering from post-traumatic stress syndrome and major depression.¹⁰⁰

When Dr. Keram first visited him in 2005, she noted that “the effects of even one night of isolation on Mr. Hamdan were so pronounced” that it was difficult for her to do her job.¹⁰¹ Since then, Hamdan has been moved into Camp 1, then Camp 6, and he is now in Camp 5, where he was been held for more than a year. Dr. Keram warns that if Hamdan remains in the isolating conditions of Camp 5 his condition will continue to deteriorate.¹⁰²

At Hamdan’s military commission hearing in April, he announced his intention to boycott his trial, ordered his lawyers not to speak on his behalf, and subsequently cut off all contact with them. Hamdan’s lawyers have argued that, due in large part to his current conditions of confinement, he appears to lack the mental capacity to stand trial—as well as the capacity to waive his right to participate.¹⁰³

In response, the commission’s judge ordered the Department of Defense to appoint a panel of experts to review Hamdan’s mental health and determine whether he is fit to stand trial. The decision is due June 13, 2008.

⁹⁹ Defense Motion for Relief from Punitive Conditions of Confinement, Declaration of Andrea Prasow, Military Commission, *United States v. Hamdan*, Feb. 1, 2008, Attachment G, para. 17.

¹⁰⁰ Defense Motion for RMC 909 Competency Hearing and Authorization for Funding of Examination, Declaration of Dr. Emily Keram, Military Commission, *United States v. Hamdan*, May 14, 2008, Attachment A, para. 9.

¹⁰¹ Defense Motion for Relief from Punitive Conditions of Confinement, Declaration of Dr. Emily Keram, Military Commission, *United States v. Hamdan*, Feb. 1, 2008, Attachment B, para. 5.

¹⁰² Keram Declaration, May 14, 2008, para. 33.

¹⁰³ Defense Motion for RMC 909 Competency Hearing and Authorization for Funding of Examination, Military Commission, *United States v. Hamdan*, May 14, 2008, pp. 1-2.

V. International Standards

Binding human rights obligations require the United States to treat all persons in its custody “with humanity and with respect for the inherent dignity of the human person.” They also prohibit the United States from subjecting anyone in its custody to “cruel, inhuman, or degrading treatment.”¹⁰⁴

The US Supreme Court has ruled that prisoners at Guantanamo are also protected by the humane treatment requirements of Common Article 3 of the Geneva Conventions, which prohibit “cruel... humiliating and degrading treatment.”¹⁰⁵

In February 2006 five United Nations experts issued a report on Guantanamo, criticizing “prolonged detention in Maximum Security units” and warning that prolonged solitary confinement violates the rights of detainees under binding provisions of the International Covenant on Civil and Political Rights.¹⁰⁶ The report also noted that the “treatment of detainees since their arrests, and the conditions of their confinement, have had profound effects on the mental health of many of them,” and warned that the “severe mental health consequences” are likely to impose health burdens on the detainees and their families for years to come.¹⁰⁷

Both the UN Committee against Torture and the UN Human Rights Committee have also criticized the United States for conditions in supermax prisons—prisons whose

¹⁰⁴ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16 at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 10; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994, art. 16. This is true regardless of the validity of the US claim that the detainees are “enemy combatants” held as part of an armed conflict, since international human rights law continues to apply during armed conflict. UN Commission on Human Rights, “Report on the situation of detainees at Guantanamo Bay,” E/CN.4.2006/120, February 15, 2006, paras. 7-13.

¹⁰⁵ Article 3 common to the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted August 12, 1949, 75 U.N.T.S. 31, entered into force October 21, 1950; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted August 12, 1949, 75 U.N.T.S. 85, entered into force October 21, 1950; Geneva Convention relative to the Treatment of Prisoners of War, adopted August 12, 1949, 75 U.N.T.S. 135, entered into force October 21, 1950; Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted August 12, 1949, 75 U.N.T.S. 287, entered into force October 21, 1950. The US ratified the 1949 Geneva Conventions in 1955. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

¹⁰⁶ UN Commission on Human Rights, “Report on the situation of detainees at Guantanamo Bay,” para. 53.

¹⁰⁷ *Ibid.*, para. 71.

conditions are, as explained above, in many ways similar to the conditions in Guantanamo's high-security units.¹⁰⁸ The Human Rights Committee urged the US government to reform these prisons in accordance with the UN minimum standards for the treatment of detainees. These standards require, among other things, that cells have natural light and fresh air, and that prisoners be allowed regular communications with family and friends, and regular access to the news—none of which is provided to the prisoners held in Guantanamo's Camp 5 and Camp 6.¹⁰⁹

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the expert body on conditions of confinement for the Council of Europe, has similarly warned that the “application of a solitary confinement-type regime... can have very harmful consequences for the person concerned. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.”¹¹⁰ The CPT has also highlighted the importance of providing prisoners access to natural light, regular educational and recreational opportunities, and regular contact—including phone calls—with family members. None of this has been provided to the detainees in maximum-security units in Guantanamo.¹¹¹

¹⁰⁸ United Nations Committee against Torture, “Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, United States of America,” CAT/C/USA/CO/2, July 25, 2006, para. 36 (stating concerns “about the extremely harsh regime imposed on detainees in ‘supermaximum prisons’”); UN Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Comments of the Human Rights Committee, United States of America,” CCPR/C/79/ADD 50, April 6, 1995, para. 20 (describing conditions in some supermax prisons as “incompatible” with the obligation to treat all detainees humanely).

¹⁰⁹ Article 1 of the Basic Principles for the Treatment of Prisoners (adopted by the UN in 1990) emphasizes that “[a]ll prisoners shall be treated with the respect due to their inherent dignity and value as human beings.” Basic Principles for the Treatment of Prisoners, adopted December 14, 1990, G.A. Res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc A/45/49 (1990), G.A. Res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A), p. 200, U.N. Doc A/45/49 (1990). Similarly, Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that “[a]ll persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.” Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted December 9, 1988, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988). Although non-binding, these rules set out basic standards that all UN member states are expected to follow. Indeed, the principle of humane treatment is reiterated in many treaties and is a norm of customary international law in both situations of peace and armed conflict.

¹¹⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *The CPT standards*, CPT/Inf/E (2002) 1 - Rev. 2006, para. 56.

¹¹¹ *Ibid.*, paras. 30, 47 and 51. The CPT has also noted in other circumstances that the “indefinite nature of... detention with no effective means of challenging the concrete evidence” has been found to cause serious deterioration in mental health—something that is likely a contributing factor to the deteriorating mental health of Guantanamo detainees as well. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment, United Kingdom: Visit 2005 (November), CPT/Inf (2006) 28, para. 8 (describing the deterioration in the mental health of UK terrorism suspects held without charge).

The American Correctional Association's *Standards for Adult Correctional Institutions* also requires natural light in each inmate's room or cell—something that is not available to detainees in Camps 5 and 6.¹¹²

¹¹² American Correctional Association, *Standards for American Correctional Institutions*, 4th ed. (Lanham, MD: American Correctional Association), 4-4147 – 4-4148.

VI. Recommendations

The United States should:

- Move as many prisoners as possible into Camp 4 (or a similar setting in which prisoners are provided educational and group recreation opportunities and can congregate freely), limiting use of the higher-security units as punishment for set 30-day periods and not as facilities for prolonged detention.
- Allow group recreation, particularly in Camp 5, which is a high-security unit but reportedly has a large enough recreation area to accommodate multiple prisoners.
- Transform Camp 6, which is currently a high-security unit, into a medium-security unit, as is reportedly being considered. Allow detainees out of their cells into the communal (and currently unused) areas in Camp 6.
- Provide all detainees educational opportunities, including English-language lessons, Arabic lessons, and materials in their own languages.
- Build additional recreation areas, and ensure that prisoners are allowed to exercise during daylight or twilight hours, rather than in the middle of the night.
- Allow monthly phone calls to approved family members at home and provide video links, as has been done for detainees held in Bagram Air Base in Afghanistan, so that detainees can reconnect with their spouses, parents, children, and other family members.
- Make some accommodation for family visits, particularly in cases of pressing humanitarian need.
- Allow regular and confidential phone calls between detainees and their attorneys. This is particularly important for detainees who have been charged before military commissions, whose attorneys may not be able to wait for the next scheduled visit to make decisions critical to their client's case.
- Allow detainees to keep additional reading and other materials (such as colored pencils and paper) in their cells so as to help them pass the time.

US authorities should institute these modest changes to break up the monotony of the day by providing detainees increased social, recreational, and educational opportunities, while at the same time continuing to protect prison staff. These changes—some of which are reportedly already in the works—should be implemented at the earliest possible time.

Acknowledgments

This report was written by Jennifer Daskal, senior counterterrorism counsel at Human Rights Watch, with portions contributed by Stacy Sullivan, counterterrorism advisor. It is based on research conducted by Daskal, Sullivan, and Abigail Deshman, a legal intern with the Terrorism and Counterterrorism Program at Human Rights Watch.

The report was reviewed and edited by Joanne Mariner, terrorism and counterterrorism director at Human Rights Watch; Dinah PoKempner, general counsel; and Joseph Saunders, deputy program director.

Additional assistance was provided by Thodleen Dessources, senior associate, Thomas Gilchrist, associate, and Rebecca Musarra, legal intern. Andrea Holley, publications director, and Grace Choi, publications specialist, assisted with the photographs and prepared the report for publication.

Human Rights Watch would like to express gratitude to the Center for Constitutional Rights for providing names and contact details for dozens of attorneys representing Guantanamo Bay detainees, as well as the many attorneys and government officials who spent so much time sharing material and information with Human Rights Watch.

Human Rights Watch gratefully acknowledges the generous support of the Atlantic Philanthropies, the Normandie Foundation, and the John Merck Fund.

Appendix: Email from Attorneys for Saber Lahmar to Department of Justice Officials¹¹³

Introduction

Saber Lahmar, ISN 100002, has been held at Guantanamo Bay since January 20, 2002. He is a religious scholar and Arabic language teacher who was living with his wife in Sarajevo, Bosnia, until he was arrested by the Bosnia government in October 2001 at the demand of the United States. The U.S. told the Bosnians that he and several others (including ISN's 10001, and 10003-6) were planning to attack the U.S. and British Embassies in Sarajevo. All six were arrested and jailed for ninety days while the claims were investigated by Bosnian authorities working with U.S. authorities. When no evidence was found support their arrest, he and the other five were ordered released by the Bosnian Supreme Court. The Chief Prosecutor of Bosnia, who was involved in the investigation, agreed with this result. However, none of the men were released because the U.S. then demanded that the Bosnian government hand them over to be flown to Guantanamo.

We were scheduled to meet with Mr. Lahmar on March 21, 2007. We had conferred with him on each of our previous nine visits, beginning in December 2004. We visited with him in August 2006 in his cell at Camp Echo and in November 2006 in an interview cell at Camp Echo. The August meeting was notable because JTF personnel told us several times no one was living at Camp Echo until the day of our meeting – the last day of our visit. [Other clients knew and told us where he was] Our unsuccessful efforts to see him on the March 2007 visit are well known to Captain McCarthy and Captain Smith and are the subject of various formal requests for action we filed with the SJA office on March 21 and 22.

Since arriving at Guantanamo, Mr. Lahmar has spent more than two of his five and one-quarter years in restricted and isolated confinement. Since June 2006, he has been in a heavily restricted and isolated confinement at Camp Echo where he has virtually no communication with anyone save guards and occasional medical

¹¹³ Email communication from attorneys Stephen H. Oleskey and Robert C. Hirsch, Wilmer Hale law firm, to Terry Henry and Andrew Warden, Department of Justice, April 4, 2007 (provided by Oleskey and Hirsch to Human Rights Watch, May 22, 2008).

staff. Mr. Lahmar does not understand why he has been placed in restricted confinement and the authorities at Guantanamo have declined to provide any explanation. We do know that he was chosen by Colonel Bumgarner to be a member of the short-lived prisoner group discussing camp confinement conditions with the Colonel and we understand he may have been originally sent to Camp Echo in June 2006 because of confusion in carrying out Colonel Bumgarner's instruction that Mr. Lahmar be returned to his former location in Echo Block, Camp 1. However, even after we expressed serious concerns over his confinement conditions during and after our August and November 2006 visits, Mr. Lahmar has continued to be kept closely confined in Camp Echo, notwithstanding the serious effects on his health and violations and the apparent violations of applicable provisions of the Army Field Manual and Common Article III of the Geneva Conventions.

Mr. Lahmar's continued heavily isolated confinement is having a serious, adverse impact on his physical and mental health. Under the current conditions of his confinement, based on our conversations with him in August and November 2006, Mr. Lahmar lives in an 8' by 6' cell. A fluorescent light in his cell is kept on twenty-four hours a day and the only window in his cell has been painted over, limiting the natural light in his cell. Mr. Lahmar receives no family mail, is not allowed to keep the legal mail that he does receive, and, despite repeated requests, has been denied a pen to write us as his counsel. Denying him access to writing materials is interfering with our ability to represent him. It appears that his reading material is limited to the Koran. He was only sometimes offered opportunities to exercise. We believe he has not been out of his cell in months except to see us – once – and for medical visits. In addition to the added emotional stress that the lack of exercise induces, Mr. Lahmar is denied most elements of personal comfort, and is only given a sheet to sleep with at 10:00 p.m. each night that is then taken away at 5:00 a.m. the next morning.

Mr. Lahmar's physical health has deteriorated significantly and noticeably. In November 2006, Mr. Lahmar had lost approximately 38 pounds since our August visit. He described a sharp, tight pain in his chest and severe pain in his legs. He has suffered from the pain in his chest for more than a year and a half with no improvement as of November. JTF doctors who visited Mr. Lahmar earlier in 2006

informed him have that the pain in his legs is a “major problem” as the nerves and muscles behind his knees and calves were almost dead. In fact, shortly before he was moved to camp Echo, JTF medical staff told him he should be attending physical therapy and that he should be in Camp IV because he could walk regularly there. He had not been visited for therapy as of November. On previous occasions, Mr. Lahmar also complained of severe and constant jaw pain, kidney stones, and eye irritation and sensitivity from lack of natural light.

★ ★ ★

On our visit to see Mr. Lahmar, on March 19-21, we were told Mr. Lahmar declined to be moved from his cell to visit with us. Our requests to interview him in his cell, or even to go to his cell to see if he would feel comfortable leaving the cell to visit with us after seeing us, were denied despite Mr. Lahmar’s declining physical and mental health. We were told that when he was informed we were there, he did not move – but continued to lay motionless staring at the wall behind his steel bunk. We are concerned that his restricted confinement has served to exacerbate the psychological damage he previously suffered at Guantanamo. Furthermore, we are concerned that his inability and/or refusal to exercise, which is likely a result of the continuing psychological trauma caused by his heavily restricted confinement, will ultimately leave him unable ever again to use his legs.

Psychological effects of restricted confinement

It is well documented that restricted confinement of an individual, regardless of mental state prior to confinement, will lead to permanent psychological damage.¹¹⁴ When individuals who are already suffering from psychological disorders are placed in a restricted confinement situation, the restricted confinement causes further psychological damage.¹¹⁵

¹¹⁴ See Jones ‘El v. Berge, 164 F. Supp. 2d 1096, 1101-02 (W.D. Wis. 2001) (finding that that even individuals who have no history of mental illness and are not subject to a psychological breakdown often develop symptoms that include paranoid delusional disorder, dissociative disorder, schizophrenia and panic disorder); Ruiz v. Johnson, 37 F. Supp. 2d 855, 907 (S.D. Tex. 1999) (finding that Texas administrative segregation units were “virtual incubators of psychoses—seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities.”); Thomas B. Benjamin & Kenneth Lux, *Solitary Confinement as Psychological Punishment*, 13 CAL. W.L. REV. 265, 268 (1977); Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQUENCY 124, 132 (2003).

¹¹⁵ See Ruiz, 37 F. Supp. 2d at 907.

Studies on the psychiatric effects of solitary confinement support the frequent observation by prison experts that placing an individual in restricted confinement ultimately will lead to serious psychological damage. As one study states, the “evidence appears overwhelming that solitary confinement alone, even in the absence of physical brutality or unhygienic conditions, can produce emotional damage, declines in mental functioning, and even the most extreme forms of psychopathology such as depersonalization, hallucination and delusions.”¹¹⁶ These symptoms ultimately become more pronounced as the time of restricted confinement is increased, and *continue to last even after the end of the restricted confinement*.¹¹⁷

Additionally, the studies note that the circumstances surrounding the confinement can have a significant impact on the degree of psychological damage suffered by an inmate. When an inmate views his or her restricted confinement as threatening, that individual is much more likely to suffer psychological damage from the confinement than an individual who believes the confinement is more benign.¹¹⁸ Similarly, when an individual does not understand the basis of the restricted confinement, or views it as an “arbitrary exercise of power and intimidation,” he or she will likely suffer severe psychological pain.¹¹⁹ Regardless of the circumstances, however, “there is not a single published study of solitary or supermax-like confinement lasting for longer than 10 days, where participants were unable to terminate their isolation at will, that failed to find negative psychological effects.”¹²⁰

Although JTF-GTMO considers that Mr. Lahmar’s is not being kept in isolated or solitary confinement under its definitions, his confinement conditions in fact closely mirror those of supermax prisons and can reasonably be expected to result in similar psychological injury.

¹¹⁶ Benjamin & Lux, *supra* note 4, at 268.

¹¹⁷ *Id.* at 271.

¹¹⁸ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL’Y 325, 347 (2006).

¹¹⁹ *Id.* at 354.

¹²⁰ Haney, *supra* note 4, at 132.

The Army Field Manual

Mr. Lahmar's conditions of confinement fall outside the guidelines established for segregation or separation as set out in the Army Field Manual (AFM) for Human Intelligence Collection Operations. Although the AFM allows for the use of segregation in certain circumstances, and for separation as an interrogation technique, Mr. Lahmar's restricted confinement does not meet the standards required for either segregation or separation.

The AFM defines segregation as, "removing a detainee from other detainees and their environment for legitimate purposes unrelated to interrogation, such as when necessary for the movement, health, safety and/or security of the detainee, or the detention facility or its personnel."¹²¹ Given the definition of segregation as removing a detainee for *legitimate* purposes, the implication is that DOD considers that segregation is a permissible action, within the guidelines established by the AFM. In this instance, however, Mr. Lahmar's segregation does not meet any of the four criteria established by the AFM. There is no evidence that Mr. Lahmar has been segregated for purposes of his movement or for his own security. And while we recognize that JTF will have a perspective different from ours with respect to camp safety, we are not aware of any conduct by Mr. Lahmar that would objectively support any reasonable conclusion that he poses a safety risk to the guards or other detainees. Given the toll that his restricted confinement has taken on him psychologically and physically, it cannot be said that he has been moved for health purposes. Indeed, he apparently was sent to Camp Echo in June 2006 by accident, in connection with an apparent act by Colonel Bumgarner that only could be understood as one of kindness or a reward. Therefore, Mr. Lahmar's restricted confinement cannot be said to meet the AFM's standards for segregation.

If Mr. Lahmar is not properly being segregated as of April 2007, as permitted under the AFM for limited purposes, the question becomes whether he is being separated for the purpose of interrogation. According to the AFM, separation may be used "to deny the detainee the opportunity to communicate with other detainees in order to keep him from learning counter-resistance techniques or gathering new information to support a cover story; decreasing the detainee's resistance to

¹²¹ Dep't of the Army, Field Manual No. 2-22.3, Human Intelligence Collector Operations para. M-2 (2006).

interrogation.”¹²² At this point, there is no credible argument that Mr. Lahmar’s restricted confinement is being used to prevent him from gaining new information or decreasing his resistance to interrogation. As of November, he had not been interrogated since he was placed in restricted confinement approximately six months earlier. Moreover, after more than five years in Guantanamo, it is very doubtful that Mr. Lahmar would have any intelligence value in any event.

Finally, and importantly, even if Mr. Lahmar’s confinement could credibly be said to be an interrogation technique, he still may not be held indefinitely. The Army Field Manual specifically requires that even for interrogation purposes, physical separation of an individual may only last for an initial period of 30 days.¹²³ Any extension of that initial period must be reviewed by the staff judge advocate and approved by the General Officer/Flag Officer who initially approved the use of separation.¹²⁴ We believe that it is very doubtful that these steps have been regularly followed since late July 2006, especially given what the Camp medical knows about Mr. Lahmar’s physical and psychological condition.

Additionally, the AFM acknowledges the applicability of the Detainee Treatment Act of 2005 and Common Article III of the Geneva Convention to any use of separation.¹²⁵

England Memorandum and the Humane Treatment Requirement of Common Article 3

Following the United States Supreme Court’s June 2006 decision in *Hamdan v. Rumsfeld*, which held that Common Article 3 of the Geneva Conventions applies to Guantanamo detainees, the Department of Defense chose to clarify its position that it has always treated detainees in compliance with Common Article 3.¹²⁶ On July 7, 2006, Deputy Secretary of Defense Gordon R. England issued a memorandum

¹²² *Id.* at para. M-1.

¹²³ *Id.* at para. M-29.

¹²⁴ *Id.* at para. M-30.

¹²⁵ *Id.* at para. M-2, M-4.

¹²⁶ *Hamdan v. Rumsfeld*, 126 S.Ct. 2749, 2798 (2006); Memorandum from Gordon R. England on the Application of Common Article 3 of the Geneva Conventions to the Treatment of Detainees in the Department of Defense (July 7, 2006); Defense Department Update, July 11, 2006 – England Detainee Treatment Memo, <http://www.defenselink.mil/home/dodupdate/For-the-record/documents/20060711.html>.

summarizing DOD policy that Common Article 3 of the Geneva Convention, “applies as a matter of law” to the treatment of detainees held by the Department of Defense.¹²⁷ Specifically, Deputy Secretary Gordon stated that the application of Common Article 3 to detainees meant that the detainees must be treated humanely, as “humane treatment [is] the overarching *requirement* of Common Article 3.”¹²⁸ Furthermore, the memorandum *ordered* commanders to review their existing practices to ensure that prisoners were being treated consistently with Common Article 3.¹²⁹ According to the Deputy Secretary’s interpretation of Common Article 3, which is binding, official DOD policy, this means ensuring that all detainees are being treated humanely.

Mr. Lahmar’s current confinement circumstances cannot be said to be humane and therefore his confinement circumstances do not comply with Common Article 3. By restricting Mr. Lahmar to his cell, without contact with other detainees or individuals other than the guards, in the light of his existing physical and emotional conditions, the Department of Defense is causing him severe, irreversible psychological damage and lasting physical harm. His confinement is therefore not consistent with the humane treatment standard established by Common Article 3, a requirement expressly reinforced by Deputy Secretary England’s 2006 Memo. The DOD policy specified in the England Memo is still binding and effective.¹³⁰ *Therefore, we respectfully reiterate our written request of March 21, 2007 that JTF-GTMO immediately review the conditions of Mr. Lahmar’s confinement, move Mr. Lahmar from restricted confinement, and place him with others in the detainee population so that he can have some non-guard contact and recreation/physical therapy.*

Finally, under the Military Commissions Act of 2006, cruel or inhuman treatment is defined as, “[t]he act of a person who commits, or conspires, or

¹²⁷ Memorandum from Gordon R. England on the Application of Common Article 3 of the Geneva Conventions to the Treatment of Detainees in the Department of Defense (July 7, 2006).

¹²⁸ *Id.* (emphasis added); see Defense Department Update, July 11, 2006 – England Detainee Treatment Memo, <http://www.defenselink.mil/home/dodupdate/For-the-record/documents/20060711.html>.

¹²⁹ See Memorandum from Gordon R. England on the Application of Common Article 3 of the Geneva Conventions to the Treatment of Detainees in the Department of Defense (July 7, 2006); Defense Department Update, July 11, 2006 – England Detainee Treatment Memo, <http://www.defenselink.mil/home/dodupdate/For-the-record/documents/20060711.html>.

¹³⁰ Defense Department Update, July 11, 2006 – England Detainee Treatment Memo, <http://www.defenselink.mil/home/dodupdate/For-the-record/documents/20060711.html>.

attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering...upon another within his custody or control.”¹³¹ Mental pain and suffering is defined by 18 U.S.C. § 2340(2) as, “the administration or application, of...procedures calculated to disrupt profoundly the senses or the personality.”¹³² The International Criminal Tribunal for Yugoslavia has used a similar definition stating that, “cruel treatment constitutes an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity.”¹³³ Regardless of the definition used, as a result of the severe mental pain being suffered by Mr. Lahmar, his continued restricted confinement in this fashion is a violation of Common Article 3.

Conclusion

Mr. Lahmar is not a threat to himself, the members of the military serving at Guantanamo, or the other inmates. After five years at Guantanamo, his separation cannot possibly be related to interrogation, as it cannot realistically be said that he has any meaningful information to provide to interrogators. There is no claim that Mr. Lahmar can be or is being punished in this fashion, much less that his segregation is necessary for his own health or safety or that of others. His confinement for over nine months in this fashion cannot reasonably be justified in light of the procedures required by the AMF. Therefore, his continuing confinement circumstances, especially in view of the damage he has already experienced after five years in Guantanamo, cannot be seen at this time other than as cruel and inhumane treatment of a psychologically damaged individual, which directly violates Common Article III of the Geneva Conventions as it is binding in Guantanamo.

¹³¹ Military Commissions Act of 2006, Pub.L. 109-366, Oct. 17, 2006, 120 Stat. 2632 (codified at 18 U.S.C. § 2441(d)(1)(B) (2007)).

¹³² 18 U.S.C. § 2340(2) (2007).

¹³³ Prosecutor v. Delali, Case No. IT-96-21-T, Judgment, ¶ 552 (Nov.16, 1998).